IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 708 of 2003
With
CRIMINAL APPEAL No. 709 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE ANIL R. DAVE

HONOURABLE MR.JUSTICE H.B.ANTANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RABARI SOMABHAI KARSANBHAI - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR US BRAHMBHATT for Appellant(s) : 1,
MS HANSABEN PUNANI Ld. APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE

and

HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 30/08/2007

CAV JUDGMENT

(Per : HONOURABLE MR.JUSTICE H.B.ANTANI)

1. Both these appeals preferred under sec. 374(2) of CrPC against the judgment rendered by the learned Addl. Sessions Judge, 2nd Fast Track Court, Mehsana in Sessions Case No. 2/2003, are disposed of by this common judgment as they arise out of Sessions Case No. 2/2003. The ld. Judge convicted the appellant No. 1 and imposed the sentence of 10 years R/I and fine of Rs. 1000/-, in default, further R/I of one month under sec. 376 of IPC and one month's R/I and fine of Rs. 200/-, in default, 10 days R/I under sec. 506(2) of IPC. While the appellant no. 2 has been convicted for the offence punishable under section 376 of IPC and imposed the sentence of 10 years R/I and fine of Rs. 1000/-, in default, one year R/I. It is also observed by the learned Judge that the sentence imposed on both the appellants shall run concurrently.

2. The short facts giving rise to both these appeals are as under:

3. As per the prosecution case, the incident in question took place prior to six months from 4.9.2002. The victim was of the tender age and returning from the field to her house at 3.00pm in the afternoon. When she was passing from the well of Ramabhai Chaudhari, the appellant no. 1 Rabari Somabhai Karsanbhai caught hold of her gaged her

mouth and committed rape on her against her will and desire. He again committed rape on the victim after 4 days. Again after fortnight he gave threat to the victim and committed rape on her against her desire. Likewise, the appellant no. 2 Thakore Parbatji Velaji also committed rape on victim when she was going to answer the call of nature. The rape was committed by the appellant no. 2 against her will and desire. The complaint was given by the victim on 4.9.2002 to the Police Sub Inspector, Satlasna. On the strength of the complaint given by the victim, the place where the rape was committed was visited and the panchnama with regard to the place of incident was prepared in the presence of panch witnesses. The mudammal article was seized during the course of investigation and the same was sent to FSL for analysis. Both, the victim and accused were sent for medical examination. The statements of the witnesses from the neighbourhood was recorded during the course of investigation. On the receipt of the report from the FSL and after obtaining the medical certificate of the victim and the appellants, both the appellants were charge-sheeted and produced before the Ld. Judicial Magistrate First Class, who in turn, committed the case to the Sessions Court under sec. 209 of CrPC as the case was exclusively triable by the Sessions Court. The prosecution has examined following witnesses in order to prove the guilt of the appellants in the commission of the offence.

1. PW-1 Varsangji Babuji ex. 6
2. PW-2 Kaliben Ajmalji Thakor Ex. 11

3. PW-3 Bharatbhai Ajmalji Thakor Ex. 13
4. PW-4 Dr.Bholidas Ambalal Raval Ex. 15
5. PW-5 Dr. Kantilal Magabhai Parmar Ex. 19
6. PW-6 Ranchhodji Sonaji Chavda Ex. 28
7. PW-7 Jagubhai Malabhai Bharwad Ex. 30

4. The prosecution has also produced the documentary evidence and they are as under:

1. Panchnama of the place of incident Ex. 7
2. Depute Order Ex. 8
3. Despatch Note Ex. 9
4. Receipt of FSL receiving muddamal Ex. 10
5. Complaint of Kaliben Ex. 12
6. Medical Certificate of Accused Karsanbhai Rabari Ex. 17
7. Medical Certificate of Accused Parbatji Velaji Thakore Ex. 18
8. Medical Check-up certificate of Kaliben Ex. 21
9. Medical certificate about age of Kalliben Ex. 22
10. FSL Report Ex. 31
11. Despatch Note Ex. 26
12. Recept of FSL receiving muddamal Ex. 27

5. At the conclusion of the trial, further statements of both the appellants were recorded under sec. 313 of CrPC and both the appellants in their further statements stated that false case was foisted on them.

6. The ld. Judge after going through the entire

gamut of oral deposition and documentary evidence held that prior to six months from 4.9.2002 the appellant no. 1 committed rape on victim at different places against her will and desire. The rape was committed by the appellant no. 1 by putting the victim under threat and the prosecution has established the involvement of appellant no. 1 in commission of the offence beyond all reasonable doubt. It is further held by the ld. Judge that appellant no. 2 also committed rape on victim without her consent and desire by putting her under threat and the prosecution has also established the involvement of appellant no. 2 in the commission of the offence. The ld. Judge after considering the evidence held that merely because the complaint was given by the complainant after lapse of six months, it would not help the appellants. Considering the fact that the victim was village girl and she was coming from very conservative family the complaint was naturally given after lapse of six months and, therefore, that contention was rejected by the ld. Judge. The Ld. Judge has, on the basis of the deposition adduced by victim vide Ex. 11 and the complaint given by her with regard to the involvement of both the appellants in the commission of the offence held that the deposition of the victim stands corroborated by her own complaint. The medical evidence further corroborates the prosecution story with regard to the rape committed by the appellants on the victim. Thus, the ld. Judge on the basis of the evidence adduced by the prosecution held that

both the appellants committed the offence punishable under sec. 376 and 506(2) of IPC and imposed the sentence of 10 years R/I and fine of Rs. 1000/-, in default, further R/I of one month under sec. 376 of IPC and one month's R/I and fine of Rs. 200/-, in default, 10 days R/I under sec. 506(2) of IPC.

7. Learned advocate representing the appellants vehementaly submitted that the complaint was given after long lapse of six months and that fact cannot be overlooked by the court in deciding the case against the appellants. The deposition adduced by the victim is not supported by any other independent witness and, therefore, the story narrated by the victim cannot be believed. The learned advocate submitted that even on perusal of the medical certificate produced by the prosecution the involvement of the appellants in the commission of the offence is not established beyond reasonable doubt. Thus, taking into account the entire oral deposition and the documentary evidence the entire link connecting the appellants with the commission of offence is not established by the prosecution in a conclusive manner and, therefore, benefit of doubt be given to the appellants, and they be acquitted forthwith for the offence for which they have been charged.

8. Ld. APP Ms. Hansaben Punani representing the State placed heavy reliance on the deposition adduced by the victim PW-2 Ex. 11. The victim has, in clear

terms deposed in her testimony as to how she was put under threat by the appellant no. 1 and committed rape on her on three different occasions. Likewise, she has in clear terms deposed that the appellant no. 2 also committed rape on her against her will and desire. The deposition adduced by the victim stands corroborated by her own complaint vide Ex. 12. When the deposition of the victim does not raise any doubt and supported by her own complaint, then, there is no need for the prosecution to provide further corroboration in the matter. Even if corroboration is required to be proved by the prosecution, then, there is enough corroboration in the form of the medical certificate, the panchnama of the place of incident, the deposition adduced by the Doctor who had examined the victim and the appellants and the report given by FSL. Thus, considering the overall evidence on record of the case, the prosecution has established the involvement of both the appellants in the commission of the offence in a clinching manner and, therefore, the judgment rendered by the ld. Addl. Sessions Judge, 2nd Fast Track Court, Mehsana requires to be upheld.

9. We have heard the learned advocate Mr. Brahmbhatt for the appellants and Ms. Hansaben Punani learned APP for the respondent-State and perused the record of the case.

10. The victim has given the deposition vide ex. 11, wherein, she has narrated as to how appellant no. 1

gave her threat and took her forcibly in the field and committed rape on her by gaging her mouth. He also committed rape on two more occasions as narrated by the victim. The appellant no. 2 also committed rape on the victim by putting her in fear. Thus, both the appellants, as per the deposition of the victim committed rape on her against her will and desire. The defence side has not dislodged the aforesaid version given by the prosecutrix in the cross-examination. Thus, on appreciating the deposition adduced by the prosecutrix we firmly believe that the same is unassailable. The deposition adduced by victim stands corroborated by her own complaint produced vide ex. 12. In her complaint, she has in clear and categorical terms indicated the involvement of both the appellants in the commission of the offence under sec. 376 and 506(2) of IPC. There is no reason to disbelieve or discard the deposition adduced by the victim which is supported by her own complaint. If we look at the corroboration, then, there is ample corroboration in the form of deposition adduced by Bharatbhai Ajmalji Thakor PW-3 Ex. 13, Dr. Bholidas Ambalal Raval PW-4 Ex. 15, Dr. Kantilal Magabhai Parmar PW-5 Ex. 19 and Jagubhai Malabhai Bharwad PW-7 Ex. 30 to the present case. The panchnama of the place of incident, medical certificate issued by the hospital in favour of victim and the appellants and report given by the FSL further corroborates the prosecution story. Thus, on the perusal of the entire evidence on record of the case, we are of the firm view that prosecution has

established the involvement of both the appellants in the commission of the offence punishable under sec. 376 and 506(2) of IPC. The prosecution, in our considered view, has also established the entire link connecting the appellants with the commission of the offence in a cogent and convincing manner. IN view of the aforesaid facts and circumstances, we do not see any reason to interfere with the judgment and order passed by the learned Addl. Sessions Judge, 2nd Fast Track Court, Mehsana and we hereby upheld the decision rendered by the learned Addl. Sessions Judge, 2nd Fast Track Court, Mehsana, convicting the appellant no. 1 by imposing the sentence of 10 years R/I and fine of Rs. 1000/-, in default, further R/I of one month under sec. 376 of IPC and one month's R/I and fine of Rs. 200/-, in default, 10 days R/I under sec. 506(2) of IPC and appellant no. 2 by imposing the sentence of 10 years R/I and fine of Rs. 1000/-, in default, further R/I of one year.

11. For the foregoing reasons, both these appeals preferred by the appellants fail and are dismissed. The muddamal to be disposed of in terms of the direction given by the learned Addl. Sessions Judge, 2nd Fast Track Court, Mehsana.

(A.R. DAVE, J.)

(H.B. ANTANI, J.)

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